

Intervention in Further Education

The strengthened intervention process

APRIL 2014

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Introduction

The strengthened intervention process, as described in Rigour and Responsiveness in Skills, has been operating since August 2013. This document details how the process is ensuring rapid and robust action is taken to address underperformance in Further Education (FE) Corporations, designated institutions and local authority maintained FE institutions.

1. 'Rigour and Responsiveness in Skills' (April 2013) set out our approach to interventions in adult Further Education (FE) and skills, introducing a new independent Further Education Commissioner and FE Adviser role, and Administered College status.
2. This document reminds the reader of the role and purpose of the FE Commissioner, details how the FE Commissioner process operates, and sets out when and how we will communicate FE Commissioner intervention and the lessons we have learnt from those interventions so far. This document does not represent a change of policy. It sets out how existing policy is being implemented.
3. The approach applies to FE Corporations, designated institutions, and local authority maintained FE institutions. Where a college or institution is operating in a group structure, for example a Federation or acting as a sponsor to another education provider, the FE Commissioner's recommendations only apply to the college or institution subject to the intervention.
4. The same criteria for intervention applies to Sixth Form College (SFC) Corporations. Intervention in individual SFC cases is managed by the Education Funding Agency (EFA), through the National Director for Young People; reporting to Ministers. The EFA works with the Skills Funding Agency (the Agency), and consults with the Department for Education (DfE), the Department for Business, Innovation and Skills (BIS) and the FE Commissioner where adult provision is also concerned.
5. Independent training providers, including commercial and charitable providers, other organisations and employers contracted by the funding agencies are not covered by the FE Commissioner arrangements. These organisations follow the assessment, escalation and intervention process set out in the grant agreement or contract.

The purpose and role of the FE Commissioner

1. The following section reminds the reader of the purpose and role of the FE Commissioner as part of the strengthened intervention approach described in Rigour and Responsiveness. The approach ensures that, where performance is poor, rapid and rigorous action is taken to secure the necessary improvement, and to safeguard the interests of existing learners and put in place better local provision for the future.
2. The FE Commissioner provides independent advice to the Minister for Skills and Enterprise (“the Minister”) and the Chief Executives of the funding agencies (“the Chief Executives”). The FE Commissioner does not have any statutory powers: these remain with the Secretaries of State for BIS and DfE and the Chief Executive of Skills Funding (though the powers of the Chief Executive are reverting to the Secretary of State through the Deregulation Bill).
3. The three trigger points for FE Commissioner intervention are:
 - a. an inadequate Ofsted inspection; and / or
 - b. failure to meet national minimum standards of performance set by BIS or DfE; and / or
 - c. an inadequate assessment for financial health and/or financial management and control by the funding agencies (Skills Funding Agency and Education Funding Agency).
4. The FE Commissioner’s role is to assess the capacity and capability of the existing governance and leadership to deliver rapid and sustainable improvement. This assessment takes place over a two week period. In coming to his advice, he considers all relevant available information and data on the college or institution and takes account of the views of stakeholders, learners, employers and staff, as well as Ofsted, the Departments (BIS and DfE), and funding agencies. In determining his recommendations he considers the suite of intervention actions available.
5. As set out in Rigour and Responsiveness, where the FE Commissioner recommends that a college or institution is placed in Administered College status the Minister will ask him to conduct a Structure and Prospects Appraisal to consider all options and identify the necessary changes. These changes may involve new governance and leadership structures and / or new delivery models. It may also include the closure of the college or institution.
6. The FE Commissioner can call on the FE Advisers to support him. The FE Advisers have a range of skills, expertise and practical experience, and are selected depending on the reasons for intervention and the need for expert advice in a specific area, for example financial controls.

The intervention process

1. A flowchart, setting out how the intervention process operates, is included as an annex (Annex A) to this paper. Each stage is described in more detail below.

The Case Review Group

2. The Case Review Group consists of the FE Commissioner and representatives from the Departments, the funding agencies and Ofsted. The Case Review Group reviews those colleges and institutions that have triggered FE Commissioner intervention and makes recommendations to the Minister and the Chief Executives on what action will be taken. Action will be taken in every case, but the nature of the action will vary. For example the FE Commissioner will intervene in every case where a college or institution has been assessed by Ofsted as inadequate. In cases of financial health and control inadequacy and minimum standards failures the Case Review Group will consider if FE Commissioner intervention is the most appropriate course of action.
3. The criteria for considering when the FE Commissioner intervenes are set out below:
 - a. The evidence indicates that learner and/or employer needs are not being met
 - b. The evidence represents a whole college failure in quality
 - c. The evidence indicates failure in the governance and/or leadership of the college
 - d. The evidence indicates the current problem stems from unaddressed long term issues
 - e. The evidence indicates a risk to the efficient and effective use of public money
 - f. The evidence suggests the problem requires significant resources and time to address
 - g. The evidence indicates multiple failures or issues, or repeated failures or issues within a specified timescale.
4. The Minister and the Chief Executives decide which colleges and institutions are assessed by the FE Commissioner. Once a decision has been taken to send in the FE Commissioner, the Skills Funding Agency writes to the Chair of the governing body of the college or institution notifying them of the decision, the reasons for it and the timetable for the FE Commissioner assessment. The college or institution will normally be notified one week prior to the beginning of the assessment.
5. Once the college or institution has been informed of the decision, and with the agreement of the college or institution, BIS will alert the Education Training Foundation and the CEOs of relevant membership organisations (if the college or institution is a member) to the FE Commissioner's intervention. (AoC, 157 Group and/or Landex in the case of Colleges and designated institutions, and HOLEX and LGA in the case of LA maintained FE institutions.)

The (target two week) assessment

6. The FE Commissioner writes to the college or institution a few days before he begins his assessment to confirm arrangements for the first day and ask the college or institution to make available certain documentation in advance of the assessment beginning. A list of the documentation that will normally be requested from the College is attached at Annex B.
7. Although the precise approach to an assessment is tailored to each intervention, the FE Commissioner is guided by a number of key questions (set out in Annex C). Through the assessment the FE Commissioner gains a fuller understanding of the issues that led to intervention and assess whether the existing governance and leadership of the college or institution can identify and lead the necessary changes, within a specified timetable, and if they have the confidence of the learners, employers, local stakeholders and staff to do so. The FE Commissioner is often supported by FE Advisers during the assessment.
8. The FE Commissioner and FE Adviser(s) are 'on site' for between five to seven business days over the two week period. During this time they are likely to meet some or all of the following: college staff, learners, key stakeholders (including local authorities and LEPs), the funding agencies, the Departments and Ofsted. Where a college or institution is part of a group structure the FE Commissioner may also seek the views of other members of the group structure on the performance of the college or institution as it relates to their specific function in the group, i.e. as sponsor.
9. The FE Commissioner and FE Advisers review the documentation provided by the college or institution and may request additional information as necessary. The team routinely tour the site(s) and attend any board meetings or sub-committee meetings that may be scheduled for the period they are in the college or institution. Throughout the assessment period the college or institution has a number of opportunities to provide information and their views, which the FE Commissioner takes account of when determining his recommendations.
10. Throughout the assessment the FE Commissioner and FE Advisers adhere to the Code of Conduct (Annex D).

Feedback to the College

11. At the end of the assessment the FE Commissioner shares his findings and conclusions, and outlines his preliminary recommendations, with the Chair and Principal/CEO. The college or institution can also ask the FE Commissioner to feedback to the Board, or representative members of the Board, and the Senior Management Team. The FE Commissioner will use this opportunity to factual accuracy check his findings.

The Report

12. Following the assessment, the FE Commissioner prepares a report setting out his findings, conclusions and recommendations. The Case Review Group will meet shortly after to discuss the report, acting as critical friends to challenge the evidence base on which the FE Commissioner has made his recommendations. The Case Review Group considers how the recommendations could be implemented, should the Minister agree to them.

13. The report is then sent to the Minister and the Chief Executives. The Minister considers the report, and any other policy advice, and agrees a final set of recommendations. The Minister writes to the college or institution with a summary of the findings and the recommendations and tasks the Chair with developing a robust action plan for how the college or institution will implement the recommendations. The Minister will sign off the action plan. In parallel the Chief Executives may issue a Notice of Concern that includes specific conditions or restrictions of funding that will be placed on it as part of implementing the agreed recommendations.
14. If, on receipt of the letter and accompanying information, the college or institution disagrees with the recommendations they are asked to write to the Minister within 10 working days setting out the nature of their disagreement and provide any supporting evidence. The Minister will consider and respond within 10 working days.

The recommendations

15. In developing his recommendations the FE Commissioner considers the suite of interventions set out in Rigour and Responsiveness as well as any other interventions that will deliver rapid and sustainable improvement. Potential recommendations include:
 - a. *changes to governance and/or leadership*; the FE Commissioner may specify the types of skills and experiences needed and if additional capacity on the executive team is required to address specific issues.
 - b. *conditions or restrictions on funding*; including limits on growth or access to new initiatives until the college or institution has improved.
 - c. *the appointment of funding agency observers on the Board*; to observe the operation of the governing body.
 - d. *New or revisions to existing recovery plans, curriculum reviews and quality improvement plans*; forming part of the college or institution's action plan.
 - e. *a college/institution or FE Commissioner led Structure and Prospects Appraisal*; to determine the most appropriate way forward that is in the best interest of local learners and employers, including whether the college or institution should be closed and alternative provision found for learners and employers. Sixth Form Colleges are not required to conduct a Structure and Prospects Appraisal per se but EFA may recommend, as part of its advice to Ministers, that structural change is necessary. More information on the FE Commissioner led Structure and Prospects Appraisal is provided in Annex D. General guidance on the Structure and Prospects Appraisal process is provided [here](#).
 - f. *Use of the Secretary of State's intervention powers*: The FE Commissioner may advise on the appropriateness of using the Secretary of State's intervention powers (as set out in section 56A of the Further and Higher Education Act 1992) to implement the recommendations.
 - g. *Administered College status*; this normally requires the implementation of all the above recommendations. It also involves an enhanced monitoring and review role by the FE Commissioner, who advises on significant decisions / changes to be made to secure the necessary improvement. More information on Administered College status is provided in Annex E.

16. The FE Commissioner could also recommend that one or more of the FE Advisers provides support on specific aspects of implementation, for example on the Structure and Prospects Appraisal.
17. Should the FE Commissioner have concerns about possible non-compliance with charity law he may recommend that the Principal Regulator (the Secretary of State) seeks further information or take action to address those concerns, including opening an investigation. Further information on the role of Principal Regulator and the process for responding to concerns raised about compliance with charity law is available [here](#).

Monitoring and review following detailed assessment

18. The FE Commissioner leads the monitoring and review process for all those he has assessed. He works with the funding agencies to ensure this process aligns, wherever possible, with the funding agencies normal monitoring and review arrangements. The FE Commissioner monitors progress on implementing the action and assesses the impact of those actions on quality improvement and/or financial recovery. He reports regularly to the Minister and the Chief Executives of the funding agencies on progress. The precise approach to monitoring will depend on what actions the college or institution are implementing, but in broad terms it involves:
 - a. An initial meeting between the FE Commissioner, funding agencies and the college or institution as soon as possible once the college or institution has received the Minister's letter. The meeting, organised by the Skills Funding Agency local teams, will discuss the recommendations more fully and agree how the action plan will be developed.
 - b. Regular progress meetings between the FE Commissioner, funding agencies and the college or institution and other strategic partners to monitor progress against the action plan. The FE Commissioner may also agree with the college or institution to have regular 'touch base' telephone conversations with the Principal and / or Chair, in addition to these regular meetings.
 - c. A formal 'stock take' assessment after six months. The FE Commissioner conducts a two day re-assessment of the college or institution, and provides advice to Ministers and the Chief Executives of the funding agencies on any further action needed to secure continued improvement. The Minister writes to the college or institution confirming those actions. This stock take assessment may happen sooner if the FE Commissioner identifies concerns through the monthly progress meetings or later if the FE Commissioner agrees that progress is on track.
 - d. After six months, the FE Commissioner may recommend less frequent progress meetings if the college or institution is on track to delivering improvement but where the continuation of the intervention actions is necessary to ensure that improvement.
19. We expect that the action plan will normally be fully implemented within 6 months and impact is seen by 12 months. Financial health plans will generally be implemented over a longer period, the timescales for which will be agreed by the Skills Funding Agency. If a college or institution fails to deliver improvement to the agreed timetable the FE Commissioner will recommend further intervention actions, including placing the college or institution in Administered College status. Additionally, if a college or institution subsequently breaches another trigger, the FE Commissioner will consider what further,

actions are needed to secure improvement, again including whether the college or institution is placed in Administered College status.

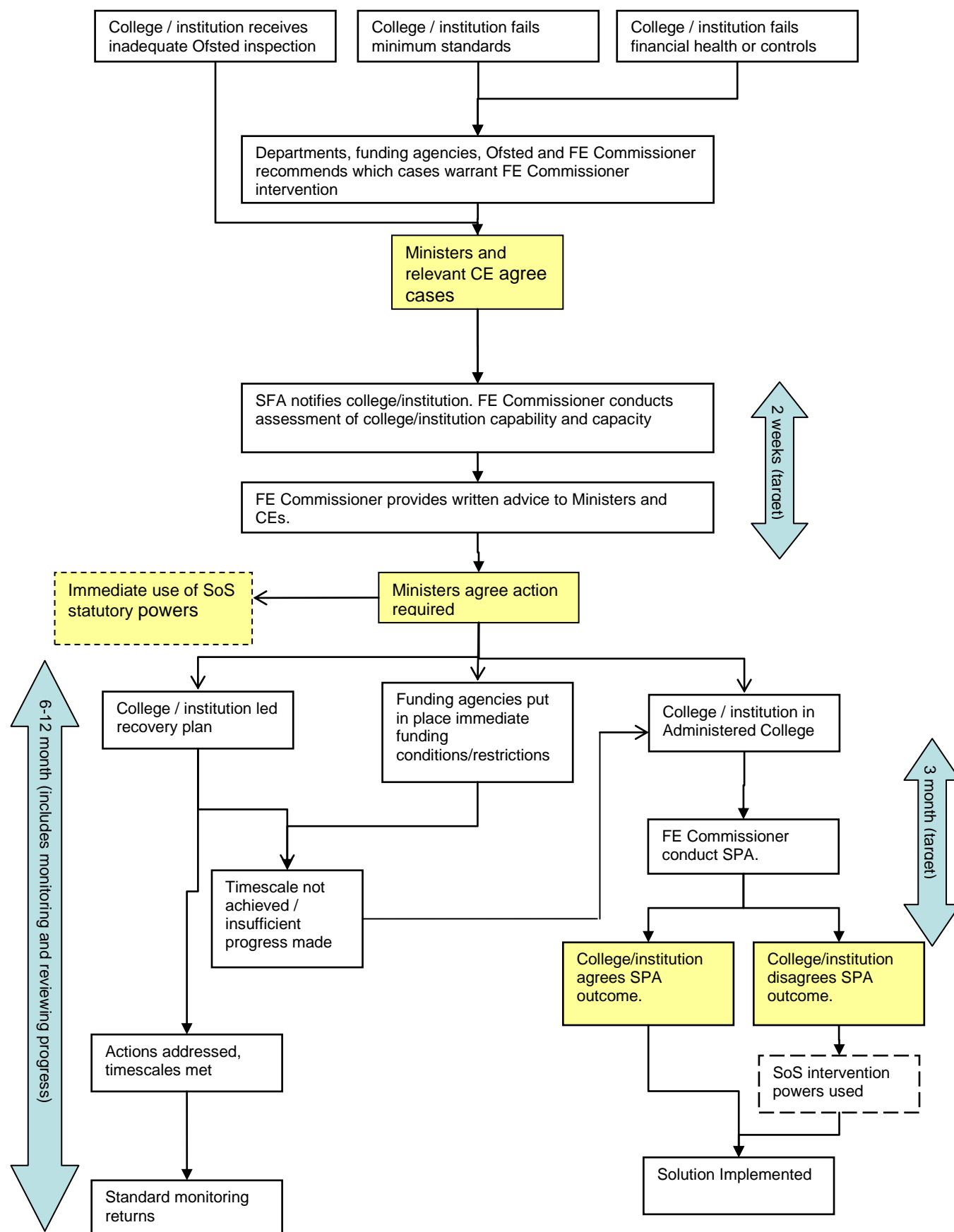
Ending intervention

20. Intervention actions remain in place until there is evidence that the implementation of the action plan has secured improvement (i.e. the college or institution no longer falls below one of the intervention triggers). Where the ultimate outcome is the closure of the college or institution then any intervention remains in place until the college has dissolved.
21. The Case Review Group considers the evidence and makes recommendations to the Minister and the Chief Executives of the funding agencies as to when the intervention should be lifted, taking into account the information from the regular monitoring and review of the college or institution. Any of the Case Review Group member organisations can recommend that intervention should end.
22. The Minister and the Chief Executives considers the advice of the Case Review Group, and any other policy advice as appropriate, and decides when the intervention should end. The Minister notifies the college (unless it has been dissolved) or institution when and how the intervention will end. In parallel the Skills Funding Agency writes to confirm when and how any Notice of Concern will be lifted.

Communications in the public domain

23. As well as this detailed process the following is made available on www.gov.uk:
 - a. The Minister's letter to the college or institution with a summary of the findings and the recommendations. The letter will only be made available once the college or institution has responded with its action plan.
 - b. Any FE Commissioner led Structure and Prospects Appraisal final reports.
 - c. Any FE Commissioner letter to colleges and institutions where he shares his reflections from his interventions.
 - d. The FE Commissioner's annual report of lessons learnt from the process, which will include case studies from those who have been through the process and the improvements seen to quality and financial recovery.

Annex A: Process flowchart



Annex B: Documentation / Information requested to be made available for an intervention

General

Profiles of Corporation members and the Clerk to the Corporation
 Papers and Minutes of the Corporation and its sub committees for the past three years
 The latest Corporation skills audit
 Details of Corporation members' training over the past three years
 Record of the Principal's and Senior team's appraisals and current targets
 Strategic Plans – Previous and Present and their corresponding monitoring documents
 Organisational Structures (as of 1st September) for the past three years
 Job descriptions of the present senior team
 CVs of the present senior team
 Details of the training/updating undertaken by the senior team over the past three years
 The College's self assessment reports for the past three years
 College Performance Management Data for the past three years
 Post Inspection Action Plan and Monitoring documentation
 Financial Recovery Plan and Monitoring documentation
 Senior team agendas and minutes of meetings relevant to quality improvement and financial recovery
 Staff survey results and student survey results
 Description of the Teaching and Learning Observation process
 Teaching and learning assessment records and post assessment actions
 Records of staff appraisals
 Examples of Performance management interventions
 Summary of staff training activities over the past two years

Financial

Organisational structure of the Finance Team
 Job Descriptions and CVs of the Finance Team
 Financial statements for the past three year
 Final Management Accounts for the past three years
 Internal audit reports for the past three years
 External audit management letters for the past three years
 Enrolment information (previous inspection until now)

Information on how resources are allocated

Latest college three year financial plan, plus any supporting action plans (e.g. for cost reductions, income improvements etc)

EFA and SFA Funding allocations for the next academic year

Detailed budget for the next academic year and bank loan arrangements

Income and Expenditure Projections

Cash flow forecasts compared to the actual cash position

Details of the capital expenditure programme

Annex C: List of questions the FE Commissioner will consider

Leadership and Management

- 1) What are the main reasons for the college or institution's present inadequacies?
- 2) Why have the difficulties now identified not been previously resolved?
- 3) Is the college or institution appropriately structured and does it have the necessary skills in its governance and leadership team to deliver the recovery needed within an appropriate time frame?
- 4) Are board members and staff aware of the changes that are needed and supportive of the proposed actions?
- 5) What are the main risks to a successful recovery and are there contingency plans in place to mitigate these risks?

Quality Improvement

- 6) Is the post inspection plan sufficiently robust to deliver the required recovery in the necessary timeframe (Under a year)?
- 7) What are the main risks that this will not be achieved and are there contingency plans in place to deal with these risks?
- 8) What are the main causes of the college or institution being described as inadequate?
- 9) Why are student outcomes not better and what actions have been/are being taken to improve them?
- 10) Are there adequate actions now in place to address these issues and will they produce improved results in an appropriate time frame (three months)?

Finance

- 11) What are the main reasons for the college or institution's financial position?
- 12) Are the steps being taken to address the issues sufficient to bring about a swift financial recovery?
- 13) Does the college or institution have the necessary skills and expertise to develop a robust Recovery Plan?
- 14) Does the college or institution have appropriate financial representation in the Senior Team and does it have appropriate financial skills represented within the Board of Governors?
- 15) What are the main risks that such a recovery will not be achieved in the envisaged time span? Have these risks been taken into account and are suitable contingency plans in place?
- 16) Does the Management Information System (MIS) produce accurate and timely reports on student numbers and their financial implications?
- 17) Does the finance and MIS team(s) have the necessary skills and support to ensure that the financial situation is satisfactorily resolved?

Annex D: The Code of Conduct

Background

1. The strengthened intervention approach was set out in Rigour and Responsiveness in Skills (April 2013). At the heart of this approach is the FE Commissioner role. The Departments (BIS and DfE), the funding agencies (Skills Funding Agency and Education Funding Agency) and the FE Commissioner will recommend those cases which have failed one or more of these identified thresholds. Ministers and the Chief Executives of the funding agencies will decide which cases warrant FE Commissioner intervention. The three trigger points for formal intervention action are: an inadequate Ofsted inspection; failure to meet national minimum standards of performance set by BIS or DfE; and/or an inadequate assessment for financial health and/or financial management and control by the Skills Funding Agency. Intervention action will also be taken where a college or institution led recovery plan fails to deliver improvement to the agreed timetable or where there are serious doubts that the college or institution will be able to meet the agreed timetable.
2. The strengthened approach applies to FE Corporations, designated institutions and local authority maintained institutions.
3. This Code of Conduct sets out how the FE Commissioner and FE Advisers will conduct themselves when they are working with a college or institution subject to intervention and how BIS manages any potential conflicts of interest.

FE Commissioner and FE Advisers conduct

4. The assessment will be conducted following the highest standards of professionalism. The FE Commissioner and FE Advisers will:
 - a. Act with integrity, honesty, objectivity and impartiality. They will treat everyone fairly and with respect and courtesy.
 - b. Maintain productive and open dialogue with staff at the college or institution, responding appropriately to questions and queries.
 - c. Conduct the assessment and any related activities with objectivity and in an open and transparent way. The assessment will be based on clear and rigorous evidence, and recommendations will be robust and defensible and in the best interest of learners.
 - d. Respect the confidentiality of the information and data they will be given
5. The FE Commissioner will be responsible for the conduct of the FE Advisers throughout the assessment and any related activities.

Use of information and data

6. The FE Commissioner and FE Advisers will review a range of available information and data about the college or institution's performance. This information and data will be provided by the funding agencies and the college or institution subject to intervention.

7. The FE Commissioner and FE Advisers will use the college or institution's self assessment report, and will use recent Ofsted inspection and monitoring visit reports. The FE Commissioner may also speak to the Ofsted lead inspector and / or the inspector who conducts the monitoring visits. They will also use information and data provided by stakeholders, for example the local authority.
8. The FE Commissioner is responsible for compiling and assuring the robustness of the evidence base. The findings, conclusions and recommendations must be based on that evidence.
9. The information and data will include that which is in the public domain, and that which is not. The FE Commissioner and FE Advisers will treat all personal and commercial information in the strictest of confidence, and will anonymise feedback where it is appropriate to do so.
10. At the end of the assessment the FE Commissioner and FE Advisers will pass all information and data they have collected during the assessment to the Skills Funding Agency who will store in line with data protection procedures.

College/Institution conduct

11. The FE Commissioner and FE Advisers will make every effort to establish and maintain a professional working relationship with the college or institution. The FE Commissioner and FE Advisers must adhere to the code of conduct, but the Department for Business, Innovation and Skills and the Skills Funding Agency expects the college/institution to:
 - e. Adhere to the college or institution's own code of conduct.
 - f. Make every effort to establish and maintain a professional working relationship with the FE Commissioner and FE Advisers during and after the assessment and any related activities.
 - g. Provide information and data as reasonably requested, and respond to all reasonable requests promptly and appropriately.
 - h. Enable the FE Commissioner and FE Adviser to conduct the assessment, responding openly and honestly, and ensure the health and safety of the FE Commissioner and FE Advisers while on site.

Concerns/Complaints

12. Should the college or institution have any concerns about how the assessment has been conducted or of the behaviour of the FE Commissioner or FE Advisers they should raise these, in the first instance, with the FE Commissioner promptly and appropriately. If the college or institution has any concerns about how the concern has been handled by the FE Commissioner, they should write to the Pauline Howland, Department for Business, Innovation and Skills, 2 St Paul's Place, 125 Norfolk Street, Sheffield, S1 2FJ.

Conflicts of Interest

13. The FE Advisers will not take part in an intervention where it is deemed there could be presence of a 'conflict of interest'. FE Advisers must declare any conflict of interests as soon as they become apparent. For the purposes of this Code of Conduct, the following rules will be adhered to:

- a. Where an FE Adviser, in any capacity other than as an FE Adviser, has worked with the college or institution subject to intervention within the last 12 months on matters related to the trigger for intervention that FE Adviser will not take part in the intervention.
 - b. Where a member of staff working at an FE Adviser's company or charity has worked with the college or institution subject to intervention within the last 12 months on matters related to the trigger for intervention that FE Adviser will not take part in the intervention.
 - c. Where an FE Adviser has taken part in an intervention then the FE Adviser will not work with the college or institution which was subject to intervention in any capacity other than that agreed by BIS for a period of 12 months.
14. In relation to an FE Adviser's company or charity working with the college or institution which was subject to intervention, we would expect the college or institution to comply with relevant procurement rules to ensure that any appointment followed due process and was conducted in a transparent and fair way.

Annex E: Administered College status

1. A college or institution is placed into Administered College status if they meet all of the following criteria:
 - a. The assessment finds that the existing governance and/or leadership does not have the capacity or capability to identify or/and deliver the necessary improvements within an agreed timetable.
 - b. The assessment finds that the existing governance and/or leadership does not have the confidence of staff, employers and local stakeholders to deliver the necessary improvements.
 - c. The assessment finds that the college or institution is unsustainable, and needs significant and fundamental changes to its structure or delivery model.
2. When a college or institution is placed in Administered College status the following activities take place:
 - a. *Governance changes*: The governing body immediately replaces some or all of its membership so that it has the right mix of skills and experience to deliver immediate changes. The funding agencies may also nominate observers to join the governing body.
 - b. *Leadership changes*: The new governing body puts in place changes to the leadership to secure improvement. This is likely to include new, or additional support to the current, Principal or CEO and new, or additional support, to members of the executive team.
 - c. *An action plan*: The new governing body, working with the FE Commissioner, develops an action plan that sets out the immediate action it will take to deliver immediate improvement. This action plan includes a new recovery plan and quality improvement plan and it must be agreed by Ministers and the Chief Executives of the funding agencies.
 - d. *A Structure and Prospects Appraisal*: The FE Commissioner leads this process to consider all future options for the learners, employers and local community, including the dissolution of the college or institution and securing alternative providers for learners. As part of this process the FE Commissioner considers and advises on future governance and leadership arrangements.
 - e. *Restrictions or conditions on funding*: The Skills Funding Agency issues a Notice of Concern setting out any restrictions of funding (i.e. growth in numbers or restrictions of participating in new initiatives). The Notice will require the college or institution to demonstrate it has the necessary skills and expertise at both executive and non-executive level to take forward its recovery and it specifies that the college or institution will put together the action plan to address any issues in capability. If the college or institution fails to meet these conditions the Skills Funding Agency may move to withdraw funding.

- f. *Secretary of State intervention powers*: Should the college or institution fail to meet the conditions set out in the Skills Funding Agency's Notice of Concern BIS will consider if the Secretary of State should use their intervention powers (as set out in section 56A of the Further and Higher Education Act 1992) to make changes to the governing body in order to deliver rapid improvements, taking advice from the FE Commissioner.

Legislative framework

3. Administered College status does not have a statutory basis and is not administration within the meaning of the Insolvency Act 1986. It is an administrative process that is aimed at delivering the actions necessary to secure improvement and ensure the best outcomes for learners. Administered College status does not affect the legislative framework under which FE Corporations operate. FE Corporations continue to act through the powers set out in the Further and Higher Education Act 1992 and the FE Corporations Instruments and Articles. FE Corporations remain responsible for discharging its duties as set out in all relevant legislation, including education and charity legislation.
4. Section 56A of the Further and Higher Education Act 1992 gives the Secretary of State the power, providing certain criteria has been met, to:
 - a. remove all or any of the members of the governing body;
 - b. appoint new members if there are vacancies (however arising);
 - c. give directions to the college or institutions related to the exercise of its powers and performance of its duties. The directions that may be given includes a direction requiring the governing body to make collaboration arrangements and/or a direction requiring the governing body to dissolve itself.

Classification

5. We expect that, with respect to colleges, any use of the Secretary of State's statutory powers would be deemed by the Office for National Statistics as the public sector taking control of the college. This control would remain until such time as that control is removed. As such, the Office for National Statistics would temporarily reclassify the college or institution as part of the public sector, and BIS would be required to consolidate the accounts of the college or institution into those of BIS (with the Department's Permanent Secretary acting as the Accounting Officer for that college).

Annex F: FE Commissioner led Structure and Prospects Appraisal

1. Where colleges are considering major change in their delivery model they should undertake a Structure and Prospects Appraisal (“the Appraisal”) to consider carefully and thoroughly the impact of these proposed changes on their communities, consulting widely and transparently on their proposals. Further guidance on the Appraisal process can be found [here](#). The FE Commissioner leads the Appraisal when an assessment finds: (a) that the position of the college or institution is unsustainable, (b) there will need to be significant and fundamental changes to the structure or delivery model and (c) where there is no/limited confidence in the current governance and leadership to make the necessary changes. The FE Commissioner brings an independent perspective that is ‘institution blind’.

The Structural and Prospects Appraisal process

2. The Appraisal process will take between two and four months, depending on what is required. To ensure strong local engagement the FE Commissioner will establish a steering Group to oversee the Appraisal. The Appraisal Steering Group (“the Group”) will consist of representatives of the college, local stakeholders, BIS, and the funding agencies. The Group will be chaired by the FE Commissioner. The Appraisal takes at its starting point the needs of and benefits for learners and employers in the locality, taking account of local customer and stakeholder views. It will consider this against the current mission of the College and whether that mission is still relevant. Depending on what that identifies, the Appraisal will then consider how the mission should change and what structural changes are needed to deliver that mission. The Appraisal has three phases:
 - a. ‘Desk research’: A detailed desk based analysis of the needs of the area, including the travel to learn patterns and changing demographics, current supply and demand, areas of unnecessary duplication and the potential gaps in the market. The analysis will also take on board the known views of key stakeholders about the role the college.
 - b. Consultation: A period of consultation with college staff and unions, learners, local stakeholders, other providers, and MPs. The consultation seeks to understand the potential areas for economic and skills growth, strategies/plans in place for other providers to grow/expand into new areas, and views from all on the current and potential mission of the College. By this point the weaknesses in the present arrangements and possible opportunities including structural options should be becoming apparent. A revised strategic mission for the college/the potential ‘place’ for a college in the locality is developed.
 - c. Long and short listing of structural options: Using the analysis and consultation to develop a long list of options, ranked in order, with pros and cons. The options will normally include no change (as the base line), internally-focused changes, federation models, looser collaborative models, merger, and new models – eg private/public partnerships, mutualisation. The options will be evaluated and a preferred option agreed. The FE Commissioner advises Ministers on the preferred option. Subject to final agreement, it is anticipated that it will then take a further three months to implement the option.

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